

DARRELL BREAUT
Claimant

U.S.D. NO. 305

KANSAS ASSOCIATION OF SCHOOL BOARDS

KANSAS WORKERS COMPENSATION FUND

The respondent appeals arguing that claimant's current need for medical treatment in regard to his low back is related entirely to the nonwork-related accident that occurred at home when he fell getting out of his chair in October 1994. An allegation of an

intervening accident raises the jurisdictional issue of whether the claimant's accidental injury arose out of and in the course of his employment and subjects a preliminary hearing order to Appeals Board review. See K.S.A. 44-534a(a)(2).

(1) Medical treatment had previously been furnished by the respondent to the claimant for work-related accidents of November 11, 1991 and January 26, 1993. On November 11, 1991, claimant injured his neck and shoulder when he fell out the back of a truck. He suffered a back injury on January 26, 1993 when lifting some wrestling mats. Dr. Fullen, an orthopedic surgeon, operated on the claimant's back in February 1993. A subsequent surgery was performed by Dr. Manguoglu, a neurosurgeon in Salina, Kansas, in April 1993.

Dr. Manguoglu treated claimant until July 1994 when he was released stating that there was nothing more he could do for the claimant and he was going to have to live with the pain. Claimant testified at the Preliminary Hearing that he continued to have neck, low back and right leg pain. Following Dr. Manguoglu's release, claimant had nonwork-related bypass surgery in August 1994 with continuing treatment by Dr. Hutchinson for his coronary artery disease.

Claimant testified that prior to falling while getting out of a chair in October 1994, he had been down for almost one week because of his continuing low back and right leg problems. Claimant contends that he fell while getting out of his chair because he had absolutely no feeling in his right leg. After the fall, claimant testified that he had more symptomatology in his low back but his right leg numbness remained the same. Following the fall, he contacted Dr. Hutchinson, his heart doctor, who advised claimant to again seek treatment with Dr. Fullen for his increased back problems. Dr. Fullen hospitalized the claimant and treated him with an epidural injection. However, respondent's insurance carrier refused to pay for this particular injection and also refused to provide any additional epidural injections.

Dr. Hutchinson's medical records, which were entered into evidence at the Preliminary Hearing, noted that claimant telephoned his office and indicated he fell after using nitroglycerin spray several times for his heart problem. Also, Dr. Fullen's report of October 25, 1994, indicated that claimant fell, possibly secondary to his heart medication. However, claimant, during his testimony, specifically denied any adverse effects from the nitroglycerin spray including causing him to fall in October 1994.

The Appeals Board finds that claimant's testimony is persuasive in affirming the Administrative Law Judge's determination that claimant's need for medical treatment was the result of his original injury and not an intervening accident. Claimant established that since his two surgeries he had had continuing back pain and right leg pain with numbness. Prior to this particular fall, claimant had been down with back pain and leg numbness for over a week. The Administrative Law Judge also granted medical treatment with a different physician and this decision is affirmed by the Appeals Board as the record has established the claimant had not suffered an intervening accident. Dr. Manguoglu had no further medical treatment for the claimant even though he still suffers lower back pain and right leg numbness.

(2) In regard to the Administrative Law Judge ordering the respondent to pay unauthorized medical in the amount of \$350, it is the finding of the Appeals Board that the Administrative Law Judge is authorized to make a preliminary award of medical compensation, pending the conclusion of a full hearing on the claim. See K.S.A. 44-534a(a)(2). K.S.A. 1992 Supp. 44-510(c) provides that an employee may obtain medical treatment without application or approval up to a total amount of \$350. Accordingly, the Appeals Board finds that the Administrative Law Judge does have jurisdiction to award payment of unauthorized medical treatment requested by the claimant at a preliminary

hearing. Since the Administrative Law Judge has not exceeded his authority, the Appeals Board does not have jurisdiction to review this issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order entered by Administrative Law Judge James R. Ward, dated March 28, 1995, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Topeka, KS
Anton C. Andersen, Kansas City, KS
James R. Ward, Administrative Law Judge
David A. Shufelt, Acting Director